

Atty. Docket No.: 548.0001
Official Action March 7, 2007
Amendment dated April 11, 2007
Appl. No. 10/696,583

PATENT

Amendments to the Drawings:

New formal drawings for Figures 1-20 are being submitted herewith.

Attachments: Replacement Sheets for Figures 1-20.

REMARKS

Drawing Objections

New corrected drawings were required by the Examiner as part of any response to the present Office Action. Pursuant to the Examiner's requirement, Applicant submits concurrently herewith Replacement Sheets in compliance with 37 CFR 1.121(d) for all of the Figures 1-20 of the application.

Claim Objections

Claims 10-13 were objected to as including a dependent claim separated by a claim which did not also depend from the same dependent claim. Applicant believes this to be claim 11, which has been canceled in the present amendment, thereby mooting the objection.

Claim 1 was objected to for an obvious error. Applicant respectfully submits that claim 1 has been amended and that the amendment addresses and corrects the error in the claim.

35 U.S.C. § 112 Rejections

Claim 1 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action states that it is unclear as to what "each side" is referring to in the claim limitation drawn to the middle member being disposed in a manner defining "a gap on each side." Applicant respectfully submits that the amendments to claim 1 clarify that the orientation of the middle member between the outer wire mesh member and the inner wire mesh member is such that a first gap is provided between the outer mesh member and the middle member and that a second gap is provided between the inner mesh member and the middle member. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the present rejection.

Claim 5 has been rejected on the grounds that the limitation “said V-shaped impressions” lacks antecedent basis. Applicant respectfully submits that claim 5 has been amended to clarify that the screed ridges of claim 1 are “configured as V-shaped impressions” thereby providing proper antecedent basis for the claim limitation. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the present rejection.

35 U.S.C. § 102

Claims 1, 2, 6, 8 and 10 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Rockstead (US 4,104,842). Applicant respectfully traverses.

Independent claim 1 now specifies that the outer mesh member itself defines “at least two outwardly projecting screed ridges extending a length of said outer wire mesh member.” In other words, as taught in Applicant’s specification, the wire mesh member includes impressions which result in raised ridges extending a length of the outer face of the outer mesh member. These outwardly extending ridges serve as “screeds” that allow a user to cut and smooth a material applied to the mesh. This aspect of this feature of the invention is fully set forth in the specification in several places, including paragraphs [0052], [0053], and [0059].

[0052] In view of the fact that there is a ½ inch gap 115, see Figure 1, between each wire mesh members 101, 102 and the middle member 110, one inch of finishing material should result in the wire mesh being embedded about half way therein. In addition, given that the wire mesh was provided with two ½ inch deep V-shaped impressions 105, 106, the apex 150 of the impressions serves as a visual screed for the application of the finishing materials and then as a mechanical screed (allowing a 48-inch blade to be slid up and down the apexes of the impressions) to ensure the wall is cut flat and ready to be finished with, for example, a stucco look.

[0053] Notably, as will be appreciated by one of ordinary skill in the art, the wall can be erected with the impressions running horizontally (see Figure 1) or vertically (see Figure 5). In either case, the panel can be cut with a screed blade running along the apexes of the V-shaped impressions.

* * * *

[0059] Figure 7 also shows a 1 3/16-inch layer of concrete 330 as a finishing material applied to both sides of the panel and smoothed using the three built in screed notches 304, 305, and 306.

By contrast, Rockstead discloses the use of flat inner and outer mesh members (ref. # 11 and 12) that sandwich a plurality of sinuous truss members (ref. # 13) having apexes (ref. # 18) that extend away from the mesh members. Thus, it is the trusses of the middle member of Rockstead that includes the outwardly extending apexes. Accordingly, Rockstead does not anticipate the claimed invention.

“A claim is only anticipated if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil*, 2 USPQ.2d 1051, 1053 (Fed. Cir. 1987). The prior art relied upon by the Examiner does not include the use of mesh members including outwardly extending impressions as set forth in amended claim 1, and therefore cannot sustain a rejection under 35 U.S.C. § 102. In addition, given that claims 2, 6, 8 and 10 depend from independent claim 1, these claims, by definition, are also not anticipated. See 35 U.S.C. § 112, para. 4 (“A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.”). Accordingly, Applicant respectfully submits that reconsideration and withdrawal of the outstanding rejection of claims 1, 2, 6, 8 and 10 under 35 U.S.C. § 102(b) is proper and such action is respectfully requested.

35 U.S.C. § 103

Claims 3-5 have been rejected as allegedly being unpatentable over Rockstead in view of Chen (US 4,611,450); claim 9 has been rejected as allegedly being unpatentable over Rockstead in view of Salsibury (US 4,660,342); and claims 7, 11, 12 and 13 have been rejected as allegedly being unpatentable over Rockstead. Applicant respectfully traverses.

Applicant respectfully submits that the amendment to claim 1 obviates the present rejection. As set forth above, Applicant submits that Rockstead not only fails to teach or suggest the use of mesh members that define outwardly projecting screed ridges, but also teaches away from using anything other than typical prior art flat mesh members. Applicant submits that the other references relied upon by the Examiner fail to overcome the deficiencies in Rockstead. For example, Chen also clearly teaches the use of flat mesh members (ref. # 213) that are common in the art. None of the prior art relied upon by the Examiner teaches or suggest taking a flat mesh member and bending, crimping, or indenting it to form ridges that may serve as screeds for cutting or smoothing a finish deposit thereon.

“A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983). In order to make out a prima facie case of obviousness, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1970). With respect to the dependent claims, Applicant respectfully submits that if an independent claim is free of the art, then any claim depending therefrom is also free of the art. *In re Fine*, 5 USPQ.2d 1596 (Fed. Cir. 1988). In view of the foregoing, Applicant respectfully submits that claims 2-5 and 7-13 of the present invention are patentable over the art of record. Accordingly, Applicant respectfully submits that reconsideration and withdrawal of the outstanding rejection of claims 2-5 and 7-13 under 35 U.S.C. § 103 is proper and such action is respectfully requested.

Co-pending Application

In the interest of full disclosure, Applicant directs the attention to co-pending child application US 11/175,032 filed on July 6, 2005. This application is a continuation application filed two years after the present application and directed specifically to the novel wire mesh members disclosed in the present application. Although having a later

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filing date, the child application has already had an Office Action issue therein including a rejection based on US 5,540,023 (Jaenson). To ensure compliance with 37 C.F.R. 1.56, Applicant respectfully invites the Examiners attention to this co-pending application. Applicant submits that the Jaenson reference does not teach or suggest wire mesh members defining outwardly projecting screed ridges as required by the presently amended claims. However, Applicant respectfully requests that the Examiner fully consider the art of record and rejections in Applicant's co-pending application in connection with this response.

Applicant now believes the present application is in a condition for allowance and early notification of the same is respectfully requested. If the Examiner believes that the prosecution could be advanced through a telephone conversation, then the Examiner is invited to telephone the undersigned.

Respectfully submitted,
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